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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

8 KODY CREE PATTEN,

9 Petitioner

10 v.

11 STATE OF NEVADA, *et al.*,

12 Respondents

Case No. 3:22-cv-00310 RCJ-CLB

**Order**

13 The court denied Kody Cree Patten's application to proceed *in forma pauperis* in  
14 his *pro se* 28 U.S.C. § 2254 habeas action and directed him to pay the \$5.00 filing fee.  
15 (ECF No. 4.) He failed to comply with the court's order or contact the court in any way.  
16 Accordingly, the court dismissed his petition for failing to comply with the order, and  
17 judgment was entered. (ECF Nos. 5, 7.)

18 Patten filed a motion for reconsideration. (ECF No. 11.) He informed the court  
19 that he timely submitted a brass slip to request that the filing fee be paid to his unit  
20 caseworker. Initially, his caseworker told Patten that he handles all brass slips and  
21 would take care of it. (*Id.* at 2.) Shortly thereafter, Patten and his caseworker had a  
22 disagreement that ended with the caseworker informing Patten "don't ask me for  
23 anything....I won't help you." (*Id.*) Patten sets forth a timeline of events that appears to

1 demonstrate that he diligently and repeatedly tried to get the fee submitted to the court.  
2 The court had no way to know that Patten was attempting to pay because he never  
3 notified the court or sought an extension of time. However, in light of his detailed  
4 motion, the court will grant reconsideration. The order dismissing the petition is vacated.  
5 The order denying the application to proceed *in forma pauperis* is also vacated. But  
6 subsequent to Patten filing for reconsideration, he paid the \$5.00 filing fee. Thus his  
7 application to proceed *in forma pauperis* (ECF No. 1) is denied as moot.

8         The court has now reviewed the petition pursuant to Habeas Rule 4, and it will be  
9 docketed and served on respondents. A petition for federal habeas corpus should  
10 include all claims for relief of which petitioner is aware. If petitioner fails to include such  
11 a claim in his petition, he may be forever barred from seeking federal habeas relief upon  
12 that claim. See 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any  
13 claim not included in his petition, he should notify the court of that as soon as possible,  
14 perhaps by means of a motion to amend his petition to add the claim.

15         Patten has also filed a motion for appointment of counsel. (ECF No. 9.) There is  
16 no constitutional right to appointed counsel in a federal habeas corpus proceeding.  
17 *Luna v. Kernan*, 784 F.3d 640, 642 (9th Cir. 2015) (citing *Lawrence v. Florida*, 549 U.S.  
18 327, 336–37 (2007)). An indigent petitioner may request appointed counsel to pursue  
19 habeas relief. 18 U.S.C. § 3006A(a)(2)(B). The decision to appoint counsel is generally  
20 discretionary. *Id.* § 3006A(a)(2) (authorizing appointment of counsel “when the interests  
21 of justice so require”). However, counsel is appropriate if the complexities of the case  
22 are such that denial of counsel would amount to a denial of due process, and where the  
23 petitioner is so uneducated that he is incapable of fairly presenting his claims. *LaMere v.*

1 *Risley*, 827 F.2d 622, 626 (9th Cir. 1987); *Brown v. United States*, 623 F.2d 54, 61 (9th  
2 Cir. 1980). Patten's petition reflects that he pleaded guilty to first-degree murder in order  
3 to avoid the death penalty for a killing he committed when he was 18 years-old. He was  
4 sentenced to life in prison without the possibility of parole. (ECF No. 1-1 at 2.) It is  
5 unclear whether some of his claims may be complex. The court will therefore appoint  
6 counsel in order to ensure due process.

7 IT IS THEREFORE ORDERED that petitioner's motion for reconsideration of the  
8 court's order dismissing the petition **(ECF No. 11) is GRANTED.**

9 IT IS FURTHER ORDERED that the court's order dismissing the petition **(ECF**  
10 **No. 5) is VACATED.**

11 IT IS FURTHER ORDERED that the court's order denying petitioner's application  
12 to proceed *in forma pauperis* **(ECF No. 4) is VACATED.**

13 IT IS FURTHER ORDERED that the application to proceed *in forma pauperis*  
14 **(ECF No. 1) is DENIED** as moot.

15 IT IS FURTHER ORDERED that the Clerk of Court to file and electronically  
16 serve the petition (ECF No. 1-1) on the respondents.

17 IT IS FURTHER ORDERED that the Clerk add Aaron D. Ford, Nevada Attorney  
18 General, as counsel for respondents and provide respondents an electronic copy of all  
19 items previously filed in this case by regenerating the Notice of Electronic Filing to the  
20 office of the AG only.

21 IT IS FURTHER ORDERED petitioner's motion for appointment of counsel **(ECF**  
22 **No. 9) is GRANTED.**

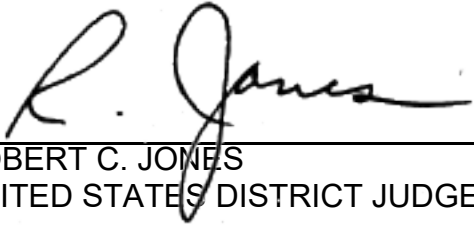
1 IT IS FURTHER ORDERED that the Federal Public Defender for the District of  
2 Nevada (FPD) is appointed to represent petitioner.

3 IT IS FURTHER ORDERED that the Clerk electronically serve the FPD a copy of  
4 this order, together with a copy of the petition for writ of habeas corpus. (ECF No. 1-1.)  
5 The FPD has 30 days from the date of entry of this order to file a notice of appearance  
6 or to indicate to the court its inability to represent petitioner in these proceedings.

7 IT IS FURTHER ORDERED that after counsel has appeared for petitioner in this  
8 case, the court will issue a scheduling order, which will, among other things, set a  
9 deadline for the filing of an amended petition.

10 IT IS FURTHER ORDERED that petitioner's motion to reopen the case (**ECF No.**  
11 **12) is DENIED** as moot.

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13 DATED this 10<sup>th</sup> day of August, 2023.

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16 ROBERT C. JONES  
17 UNITED STATES DISTRICT JUDGE  
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